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Artissimo Designs LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NEOFONIE GMBH, a German
corporation,

Plaintiff,

vs.

ARTISSIMO DESIGNS LLC, a
Delaware limited liability company,

Defendant.

Case No.: 8:17-cv-00772 CJC
(JDEx)

**PROPOSED REVISED CASE
MANAGEMENT ORDER**

Hearing Date: None Set
Hearing Time: None Set
Courtroom: 7C

The Honorable Cormac J. Carney

ARTISSIMO DESIGNS LLC,

Counter-Plaintiff.

vs.

NEOFONIE GMBH,

Counter-Defendant.

Pursuant to the Rule 26 of the Federal Rules of Civil Procedure and the Court's Order of January 2, 2019 (Doc. No. 57), Plaintiff/Counter-Defendant, Neofonie GmbH, and Defendant/Counter-Plaintiff, Artissimo Designs LLC, hereby provide their Proposed Revised Case Management Order. Below is a revised version of the parties' Joint Rule 26(f) Report (Doc. No. 13) followed by the proposed order.

A. STATEMENT OF THE CASE

1. Plaintiff's Statement of the Case

On or around May 23, 2016, Plaintiff, a leading IT full-service provider for digital solutions, and Defendant, a manufacturer and distributor of wall art, entered into a written agreement whereby the parties agreed to "work together" to develop, test and launch a minimum viable product ("MVP") for a new website called artdesigns.com.

Neofonie performed the agreement by delivering all the deliverables to the Defendant, including the MVP developed and tested according to the MVP definition in the parties' contract. Neofonie's performance was timely as the original, anticipated launch date of the MVP was preliminary, and shifted during the project, at Defendant's request, because of problems and failures on Defendant's end.

1 Despite Neofonie performing its part of the agreement, Defendant failed to pay
2 Neofonie's invoices which were due upon receipt, and prevented the MVP from
3 going live because it failed to obtain a Magnolia license, a must-have prerequisite
4 for the MVP, that Defendant was contractually obligated to obtain and
5 unquestionably failed to obtain. Because Defendant failed to obtain a Magnolia
6 license, Neofonie was unable to move the MVP from the test server to the live
7 production server.

8 Artissimo also prevented the MVP from going live by failing to act reasonably
9 or in good faith during its quality assurance testing of the MVP delivered by
10 Neofonie, and terminating the parties' agreement without giving Neofonie any
11 prior written warning or reasonable opportunity to cure any alleged breach as
12 required by the parties' agreement. As of the day prior to Defendant's termination
13 of the agreement, there were only minor issues reported which Defendant
14 mischaracterized as severe and which Neofonie could have quickly and easily
15 fixed (perhaps within one day).

16 Plaintiff fully performed its contractual duties, and always remained ready,
17 willing, and able at all times until the date of termination to continue to perform
18 its contractual duties. Defendant owes Plaintiff a past due balance of
19 approximately 272,013 Euros, plus interest, late charges, and costs.

20 2. Defendant's Statement of the Case

21 In early 2016, Defendant, the leading North American provider of ready-to-
22 hang wall art, engaged Plaintiff to create a deliver a direct-to-consumer
23 ecommerce website ("artdesigns.com") where Artissimo would be able to sell a
24 high-end line of products. On or about May 23, 2016, Plaintiff and Defendant
25 entered into a written agreement for Phase Two of this project ("Contract"), in
26 which Plaintiff was to implement a Minimum Viable Product ("MVP") for
27 Defendant based on the design created in Phase One. The MVP would contain all
28 essential features for Artissimo's ecommerce site, as laid out in the Contract. In

1 exchange for the MVP, Defendant would pay Plaintiff \$512,000. As Phase Two
2 progressed, Plaintiff proved unwilling or unable to fully perform and repeatedly
3 failed to meet deadlines for delivery of the functional MVP. In fact, Plaintiff
4 never delivered a working MVP to Defendant. As a result, Defendant ended the
5 relationship and refused to pay additional sums for Plaintiff's non-performance.
6 Furthermore, Plaintiff's failure to perform delayed implementation of Defendant's
7 ecommerce site for approximately one year, costing Defendant substantial profits.

8 **B. SUBJECT MATTER JURISDICTION**

9 The parties agree that this Court has original jurisdiction pursuant to 28 U.S.C.
10 §1332(a)(2) because there is complete diversity between Plaintiff and Defendant,
11 and the amount in controversy exceeds \$75,000.

12 **C. LEGAL ISSUES**

13 Plaintiff and Defendant agree that the key legal issues will be satisfaction of
14 the elements of each cause of action alleged in the Complaint and Counter-
15 Complaint. Without limitation, Plaintiff contends that Defendant's failure to pay
16 Neofonie's invoices (which were due upon receipt): failure to obtain a Magnolia
17 license; failure to provide information to Neofonie; failure to act reasonably and in
18 good faith during its quality assurance testing; and failure to give a written
19 warning and opportunity to cure any alleged breach are key legal issues.
20 Similarly, and also without limitation, Defendant identifies whether Plaintiff's
21 failure to deliver a functional product that met the requirements in the Contract
22 was a breach of the agreement as a key legal issue.

23 **D. DAMAGES**

24 Plaintiff alleges damages for Defendant's non-payment of invoices in the
25 amount of 272,013 Euros.

26 Defendant alleges damages in the amount of \$1,078,117.74, including
27 \$280,842.74 of restitution of amounts paid to Neofonie, \$284,875.00 of costs
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1 resulting from Plaintiff's breach, and \$512,400 of lost profits resulting from
2 Plaintiff's breach.

3 **E. INSURANCE**

4 The parties do not believe there is insurance coverage for any of the claims or
5 defenses in this action.

6 **F. MOTIONS TO ADD PARTIES AND/OR AMEND PLEADINGS**

7 Moot—deadline has passed.

8 **G. MANUAL FOR COMPLEX LITIGATION**

9 The parties do not believe any part of the procedures of the Manual for
10 Complex Litigation should be utilized.

11 **H. STATUS OF DISCOVERY**

12 The parties have completed service of discovery. Defendant continues to seek
13 responsive documents from Plaintiff that were promised, but not produced, in
14 discovery between the parties and deposition of Plaintiff's representative as to
15 such documents. Plaintiff disputes that Defendant requested such documents in
16 accordance with the Federal Rules of Civil Procedure and believes that Defendant
17 has in its possession or access to some of the documents requested.

18 **I. DISCOVERY PLAN**

19 Moot—deadline has passed.

20 **J. DISPOSITIVE MOTIONS**

21 Defendant has filed a motion for partial summary judgment, as to liability,
22 which Plaintiff has opposed. Plaintiff has not filed a motion for summary
23 judgment.

24 **K. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**

25 The parties have attended mediation in this matter. The mediation was not
26 successful.

1 **L. TRIAL ESTIMATE**

2 The parties propose four (4) court days for a jury trial. Plaintiff anticipates
3 calling 3-4 witnesses. Defendant anticipates calling 4-5 witnesses.

4 **M. TRIAL COUNSEL**

5 Plaintiff will be represented at trial by Sacha V. Emanuel of Emanuel Law
6 Firm. Defendant will be represented at trial by Peter C. Sales and/or Kimberly M.
7 Ingram of Bradley Arant Boult Cummings LLP.

8 **N. PROPOSED TRIAL AND FINAL PRETRIAL CONFERENCE**
9 **DATES**

10 The parties believe an April or May trial date would be appropriate, if the
11 Court's schedule allows, and identify the following dates that the parties and their
12 counsel are available for the trial to commence: April 22, April 23, May 13, or
13 May 20, 2019. The parties believe that the final pre-trial conference should be set
14 for one week prior to trial.

15 **O. INDEPENDENT EXPERT OR MASTER**

16 The parties agree that this is not a case where the Court should consider
17 appointing a master pursuant to Rule 53 or an independent scientific expert.

18 **P. OTHER ISSUES**

19 The parties do not presently anticipate requesting any other orders that should be
20 entered by the court under Rule 26(c) or under Rule 16(b) and (c).

1 Having reviewed the submission of the parties, the Court re-sets the final
2 pre-trial conference and the trial date in the above-captioned matter as follows:

3 Pre-Trial Conference: _____, 2019

4 Trial Begins: _____, 2019

5 IT IS SO ORDERED.

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7 Dated: _____
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10 _____
11 The Honorable Cormac J. Carney
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1 Respectfully submitted,

2 EMANUEL LAW

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4 DATED: January 14, 2019

5 By: /s/ Sacha V. Emanuel
6 Sacha V. Emanuel
7 Attorneys for Plaintiff/Counter-
8 Defendant
9 Neofonie GmbH

10
11 DATED: January 14, 2019

12 BRADLEY ARANT BOULT
13 CUMMINGS LLP

14 By: /s/ Kimberly M. Ingram
15 Roger G. Jones
16 Peter C. Sales
17 Kimberly M. Ingram

18 Attorneys for Defendant/Counter-
19 Claimant Artissimo Designs, LLC
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